

28.1381(A)(1) - 1

[Driving/Actual Physical Control] While Under The Influence

The crime of [driving/actual physical control] while under the influence requires the proof of the following:

1. The defendant [drove/was in actual physical control of] a vehicle in this state; and
2. The defendant was under the influence of [intoxicating liquor/any drug/ a vapor releasing substance containing a toxic substance/ any combination of liquor, drugs or vapor releasing substances] at the time of [driving/being in actual physical control]; and
3. The defendant's ability to drive a vehicle was impaired to the slightest degree by reason of being under the influence of [intoxicating liquor/ any drug/ a vapor releasing substance containing a toxic substance/ any combination of liquor, drugs or vapor releasing substances].

SOURCE: A.R.S. § 28-1381(A)(1) (statutory language as of September 1, 2001).

USE NOTE: Use language in brackets as appropriate to the facts.

The under the influence offenses can be committed while driving or while in actual physical control of a vehicle. Use the [driving/actual physical control] choices in brackets as appropriate to the facts. If there is only evidence of driving, do not include actual physical control in the instruction. If there is no issue of driving, do not refer to driving in the instruction. In some cases there may be issues of actual physical control and circumstantial evidence of driving. In those cases, the jury instruction should include both choices. See *State ex rel O'Neill v. Brown (Juan-Pascal, real party in interest)*, 182 Ariz. 525, 898 P.2d 474 (1995)(police observed cloud of dust in field and then found defendant holding the keys and seated in the stopped car).

If "actual physical control" is an issue, see the definition of that term at Instruction 28.1381(A)(1)-APC.

"Vehicle" means a device in, on or by which a person or property is or may be transported or drawn on a public highway, excluding devices moved by human power or used exclusively on stationary rails or tracks. A.R.S. § 28-101(52).
